

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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REGULATORY AUTH.

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OFFICE OF THE
EXECUTIVE SECRETARY

IN RE:)
BELLSOUTH TELECOMMUNICATION'S)
TARIFF FILING TO REDUCE GROUPING)
RATES IN RATE GROUP 5 AND TO) DOCKET NO. 00-00041
IMPLEMENT A 3 PERCENT LATE)
PAYMENT CHARGE.)

REPLY TO BELLSOUTH'S RESPONSE TO TENNESSEE CONSUMERS'S PETITION FOR
RECONSIDERATION

BellSouth does not deny that it concedes the matters stated in Tennessee consumers' Petition for Reconsideration. It waives and concedes the Hearing Officer's finding and the agency's finding that a service is involved. In addition, the company concedes that it was considering an "across-the-board rate increase which would affect all or most of its subscribers" at the time it submitted the tariff¹ and does not deny that a "late payment factor was included in BellSouth's rates on June 6, 1995" as the Hearing Officer found.² It merely argues that there is a non-basic rate offset.³ As a result the Hearing Officer's decision that the new late payment charge increases basic local exchange service is on point.⁴ Residential basic local exchange

¹BellSouth response at p. 19.

²BellSouth response at p. 3.

³BellSouth response at p. 3.

⁴Apparently BellSouth concedes that the Hearing Officer Initial Order considered and included fact issues.

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service consumers will not receive any benefit from the hunting charge reductions.⁵

Furthermore, BellSouth states that it has no objection to the TRA “issuing a revised order” on these fact issues, but the company appears to want the agency to do so without an evidentiary hearing.⁶ The company seems to be trying to make much hay out of the fact that it is operating under a price regulation plan, however that fact necessitates that it does not add to or increase basic local exchange service charges.

In a rather amazing statement BellSouth appears to argue that the agency’s mere statement that the company filed a tariff on a specific date is sufficient to provide the evidentiary and factual issues necessary to consider whether the agency properly applied the facts and law.⁷ In the same response, the company suggests that the agency revise its order to find facts not found or resolved by the Hearing Officer in his Initial Order.

With respect to the elemental sub-issues, for example, BellSouth argues that the agency should again reject the Hearing Officer’s Initial Order and rely upon its prior brief.⁸ Tennessee consumers respectfully submit that such reliance is improper. The TRA directed the Hearing

⁵In fact, the actual value of the hunting charge reductions and the actual value of the late charge payments are questions of fact not resolved by the August 3, 2000 Order.

⁶BellSouth response at p. 4, footnote 4.

⁷BellSouth response at p. 4-5.

⁸The company again acknowledges the insufficiency of the August 3, 2000 order by inviting the agency to issue a “revised order.” BellSouth response at p. 7.

Officer to decide the matter and the Hearing Officer made the decision.⁹ The TRA should have limited and still should limit its review to Hearing Officer's Order.

With respect to the issues which the TRA should have considered, BellSouth does not deny the application of Tenn. Code Ann. § 4-5-315 (c). Instead, BellSouth hopes that a rush to judgment by the agency will rely upon a Report and Recommendation never adopted by the agency. The TRA expressly remanded to the Hearing Officer to enter an Initial Order. The hearing was to be on the Initial Order and Tennessee consumers were prepared to argue the Initial Order.

BellSouth does not deny the due process standard stated in *Crump*.

Reply to BellSouth's argument on the Petition for Stay

BellSouth argues that *GBM Communications v. United Inter-Mountain* permits them charge consumers without authorization. Tennessee consumers respectfully submit that *GBM* is not applicable or that the case if it ever stood for the proposition that consumers can be charged without authorization has been superceded by Tenn. Code Ann. § 65-4-125.

GBM is not applicable because the Court in that case clearly states that *GBM* **ordered** the specific service.¹⁰ The case does not stand for the proposition that consumers must pay for service not ordered or authorized. In this case consumers will not have ordered the specific service or in some cases have privity with BellSouth regarding other services billed. There is no

⁹It should also be noted that BellSouth takes the hypocritical position that the TRA should not decide sub-issues Tennessee consumers explicitly presented, but the agency should decide sub-issues it never presented.

¹⁰ The Court states: In September 1983 *GBM* **ordered** three WATS lines from United. 723 S.W. 2d at 110.

basis for an assertion that consumers authorized the service for which BellSouth proposes to charge.

Moreover, the General Assembly enacted Tenn. Code Ann. § 65-4-125 to protect consumers, not BellSouth. Telecommunications companies should not be able to circumvent consumers individual authorization, ordering and confirmation process by simply placing the language in a tariff. In fact, the agency specifically rejected that position in In Re: Show Cause against Minimum Rate Pricing, Docket No. 98-00018. In that case Minimum Rate Pricing (MRP) sought to defend its failure to obtain authorization because it had a tariff which it alleged would have permitted it to make charges unauthorized by Tennessee consumers. The agency rejected MRP's position and held that Tenn. Code Ann. § 65-4-125 and rules pertaining thereto make the conduct of failure to obtain authorization *malum prohibitum*.¹¹ As a result, the agency held that the company must clearly and unambiguously request authorization from the customer.

Alternatively, the 1986 *GBM* case is superceded by Tenn. Code Ann. § 65-4-125.

BellSouth's attempt to insert the AT&T and Sprint's tariffs¹² into the record again are reminders that a fact hearing is necessary. Furthermore, unlawful conduct by BellSouth can not be excused because others may be engaging in unlawful. Justice will ultimately reach any unlawful actor.

Moreover, there are issues, including but not limited to antitrust issues, regarding the companies scheme to establish privity between BellSouth and Tennessee consumers where

¹¹See, Show Cause against Minimum Rate Pricing, Findings of Fact and Conclusions of law, paragraph 56.

¹²BellSouth response at p. 14.

BellSouth does not provide the service. There are other companies and billing aggregators to whom BellSouth does not refer in its response and there are other companies and billing aggregators who operate outside the regulated companies.

BellSouth's assertion that Tennessee consumers' position is that the company benefits consumers when it bills on behalf of other telecommunications service providers is denied. Tennessee consumers and the Consumer Advocate Division deny that BellSouth provides any benefit to Tennessee consumers when it bills for other companies. As its tariffs prove, BellSouth is benefiting those companies and is providing a service to those companies alone.

BellSouth extorts from consumers when it exacts payments for any service Tennessee consumers do not request. Tennessee consumers did not authorize or request BellSouth to bill for other companies and BellSouth's tariff shows that the tariff was not for the benefit of end-users of other companies.

BellSouth makes the unfounded allegation or inference that factors and billing agents have such privity of contract that they can independently bill and collect late payments. The allegation is simply unsupported. BellSouth has not refuted the law regarding factors.

Tennessee consumers stand by their argument regarding discrimination and anticompetitive conduct with respect to hunting charge reductions. No evidence has been presented which shows that the hunting service for group 5 customers is different than hunting service for any other group.

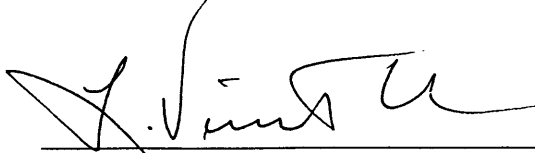
Tennessee consumers stand by their argument regarding irreparable injury.

With respect to Public Interest, BellSouth injects unverified fact assertions regarding its discovery.¹³ It asserts that the majority of its customers do not pay their bills on time. No witness has ever come forward to assert such a fact. Raising the assertion supports Tennessee consumers' position that a de novo hearing on remaining facts was not held. With respect to the company's other assertions, Tennessee consumers rely on their Petitions and incorporate their prior response to the Second Petition for Stay and Petition for Reconsideration by reference. The public interest is protected when BellSouth is not permitted to engage in *malum prohibitum* conduct and complies with the statutes and law. Its tariff does not comport to either.

Tennessee consumers respectfully submit that the TRA should adopt the fact and law conclusions of the Hearing Officer because they are supported by material evidence. Tennessee consumers further submit that the TRA majority should reconsider its August 3, 2000 decision and ratify the Hearing Officer's conclusion based upon the facts found. Tennessee consumers further submit that the agency should reconsider its decision to find in favor of BellSouth and remand to the Hearing Officer for resolution of further discovery and resolution of fact and law issues. Tennessee consumers further respectfully submit that the TRA should find that authorization, ordering and confirmation are required before BellSouth or any company bills for any service.

¹³BellSouth response at p. 19.

Respectfully submitted,



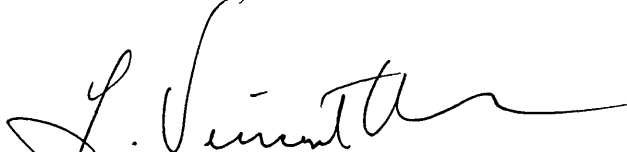
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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Document has been faxed and mailed postage prepaid to the parties listed below this 23rd day of August, 2000.

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